In the High Court of Uttaranchal at Nainital
Criminal Misc. Application no. 203/2004

Naresh Kumar S/o Ram Kishan
R/o Village Alawalpur
P.S. Bhagwanpur
District Haridwar .....Petitioner.

Vs.

1. State of Uttaranchal,
2. Ist Addl. Civil Judge (J.D.)
Roorkee, District Haridwar,
3. Rajpal Singh S/o Chandu Lal
R/o Village Alawalpur,
P.S. Bhagwanpur, District Haridwar
.....Respondents.

Hon' ble Irshad Hussain,J.

Heard Sri Rajendra Singh learned counsel for the petitioner and Sri H.C. Pandey learned A.G.A. perused the record.

2- This is a petition under section 482/483 of the Code of Criminal Procedure. The order challenged by means of this petition is dated 15.4.2004 whereby the learned Magistrate fixed a date for appearance of the petitioner and directed issuance of summons against him. By this order the prayer of the petitioner to release him on the same bail bonds was rejected. The plea taken was that the petitioner was released on bail under section 354 I.P.C. and subsequently the charge sheet was filed under section 376 I.P.C. also. It appear that the order to issue summon was passed in view of the fact that the petitioner himself was not present before the learned Magistrate when the application was taken up for disposal. If the petitioner was seeking bail also under section 376 I.P.C. and wanted him to remain on bail on the same bail bonds on which he was released under section 354 I.P.C. the petitioner should have been present before the Magistrate. The learned Magistrate rightly did not issue any warrant but directed issuance of summons against the petitioner. In view of it, it can not be accepted that his bail application had in fact been rejected.

3- Considering the facts and circumstances of the case the petitioner shall appear before the learned Magistrate in person and by subjecting to the summons so issued for his appearance he may move a fresh application for release on bail under section 376 I.P.C. on the premise that earlier he was released on bail under section 354 I.P.C. in view of the allegations of the F.I.R. and the medical examination report and that in the facts and circumstances of the case he need to be released on bail under section 376 I.P.C. It is expected that the learned Magistrate shall take cognizance of these facts while passing a proper order on the application to be moved to this effect by the petitioner when he appear before the learned Magistrate.

4- With this direction the petition is finally disposed of.

(**Irshad Hussain,J.)**

Dated :-4-5-2004

ISB